

# ARUN DISTRICT COUNCIL

## REPORT TO AND DECISION OF OVERVIEW SELECT COMMITTEE ON 3 SEPTEMBER 2019

### PART A : REPORT

<b>SUBJECT:</b>	<b>REVIEW OF COMPLAINTS REFERRED TO THE LOCAL GOVERNMENT OMBUDSMAN RELATING TO PLANNING MATTERS</b>
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<b>REPORT AUTHOR:</b>	Karl Roberts, Director of Place
<b>DATE:</b>	27 June 2019
<b>EXTN:</b>	37760
<b>PORTFOLIO AREA:</b>	Planning

#### EXECUTIVE SUMMARY:

This report summarises the complaints considered by the Local Government Ombudsman in the period 2018-2019 which relate to matters pertaining to Planning. The report highlights any learning points that have been identified.

#### RECOMMENDATIONS:

That the content of the report is noted.

#### BACKGROUND:

At the Overview Select Committee meeting on the 25 June 2019 Members asked for a report on those complaints that had been considered by the Local Government Ombudsman which related to planning. This report provides that review looking at the period 2018/19.

In addition, the report also considers the outcomes of the eight Stage 2 complaints relating to planning which were considered and concluded by the Council during this same time period. Some of these may be considered by the LGO during 2019/20.

To provide some context for the scale of number of complaints considered a total of 4 Stage 2 complaints from 2016/17 were considered by the LGO, of which there were two cases where fault was found. For the following year the LGO considered 9 cases but did not find fault or decided not to investigate all nine.

#### 2. PROPOSAL(S):

Managers of the service use the consideration of any complaints to determine what learning can be gleamed from the consideration of complaints to reduce the likelihood of such complaints being submitted in the future and to offer a better customer experience. Whilst, not offered as an excuse, Managers have noted that issues which lead to the submission of complaints tend to arise more often when the service is facing a high workload, staff shortages or both.

Training and reviewing procedures are an ongoing process and will continue as Senior Managers work towards implementing the recommendations from the 2018 Planning Peer Review. The approach taken with regard to Stage 1 complaints has also been reviewed. Generally speaking, the more rigorous the investigation of Stage 1 complaints, (which generally leads to a fuller explanation) the fewer Stage 2 complaints received.

### 3. OPTIONS:

To accept or reject the report.

### 4. CONSULTATION:

Has consultation been undertaken with:	YES	NO
Relevant Town/Parish Council		x
Relevant District Ward Councillors		x
Other groups/persons (please specify)		
5. ARE THERE ANY IMPLICATIONS IN RELATION TO THE FOLLOWING COUNCIL POLICIES: (Explain in more detail at 6 below)	YES	NO
Financial		x
Legal		x
Human Rights/Equality Impact Assessment		x
Community Safety including Section 17 of Crime & Disorder Act		x
Sustainability		x
Asset Management/Property/Land		x
Technology		x
Other (please explain)		

### 6. IMPLICATIONS:

None directly arising from the recommendation.

### 7. REASON FOR THE DECISION:

This report was requested by OSC at their meeting in June 2019. The Committee is only asked to note the report unless the Committee wishes to make any recommendations.

### 8. BACKGROUND PAPERS:



19.04.18 Final  
Decision from LGSCO



19.01.08 Final  
Decision - 1B.pdf



18.08.15 Final  
Decision - 1C.pdf



18.12.20 Final  
Decision - 1D.pdf

Equality Impact Assessment: N/A

## Complaints to the Local Government Ombudsman

### Complaint A – Papers 1A & 1B

The report from the Ombudsman provides a lot of the background to this particular case which involved a proposal for a dwelling in the rear of another property. The actual decision was a Committee decision and included an inspection of the site by the Development Control Site Inspection Panel.

It was considered through the Council's complaint system and a number of matters were identified which were acknowledged as needing addressing. Of particular note with this application was that it generated extensive correspondence from some individuals. The Council's procedures and processes were not designed to deal with multiple communications from a limited number of individuals. This led to dissatisfaction when correspondence wasn't being answered, thereby generating more correspondence.

As highlighted in paragraph 24 of the Ombudsman report, the Council had already acknowledged it could do better in terms of the level of service offered. The changes listed have already been implemented.

The matter the Ombudsman found against the Council on was that the submitted plans did not correctly show the position of a side window on the property as existing. The Council apologised for not identifying this oversight at the time the application was originally considered.

The learning other than the improvements identified in the stage 2 complaint was that it remains important to check the veracity of the plans which show the existing situation as much as it is to check and understand what is being proposed.

This same development generated a similar complaint but one which also focused on Health & Safety considerations. The Ombudsman concluded that the Council had properly considered these issues.

What this particular case identified was that from the public perspective there is an expectation that all development matters should be addressed through the 'Planning System' when in reality there are other agencies which have a role in the regulation of new development.

### Complaint B – Paper 1C

The essence of the complaint is that the complainant believes that the Council should have informed him of the proposed application nearby. However, the Ombudsman chose not to investigate the complaint because it has not seen any evidence of wrong doing by the Council. This case demonstrates that the Ombudsman focus is principally on matters of maladministration. In the case the Council had a policy not to inform individual residents of planning applications but

instead focus on other forms of notification, and thus regardless of whether someone agrees with that approach or not it is not maladministration to comply with your stated policy.

The Group Head of Planning has subsequently instructed that, when erecting site notices, they are in all areas that adjoin an application site (including to the rear).

As a postscript to this complaint the Council now encourages residents to use a third-party website which allows someone to identify planning applications within a given radius of a postcode. <https://www.planningfinder.co.uk/>

#### Complaint C – No papers

The case concerns a proposal to modify a property with a new pitched roof and dormer windows. The issue that arose was a concern regarding overlooking. However, the complainants lived in a different street to that of the proposed development and therefore didn't see the site notice that had been erected, as it had only been posted to the front of the application site. As a consequence, they missed the opportunity to comment on the application.

In considering the complaint as part of our internal processes we acknowledged that we should have put a notice on the street where the complainant lived, although that is not a stipulation of the Councils notification policy. It was also acknowledged that more could have been done to mitigate the impact of the proposed development. The Ombudsman in considering the complaint concluded that whilst the decision might not have been technically unlawful, there was fault in how the overlooking issue had been considered which had been exacerbated by the failure to display the additional site notices. This is a matter for improved training and briefing.

As a result, the Ombudsman recommended a financial remedy for the distress caused to the complainant and three other residents who made similar complaints. A total of £6500 was paid in total in compensation.

The reason the papers are not appended to this report is that the Ombudsman will not usually publish a report with a financial settlement that might lead to the identification of the complainant. This abridged version of the Ombudsman reports is considered not to undermine this approach.

#### Complaint D – Paper 1D

The basis of the complaint is that the complainant believed the Council should not have granted planning permission for a new outbuilding for a business on the grounds of noise. The Ombudsman concluded that it was unlikely to find fault with the manner in which the application was considered and decided not to investigate the complaint.

There are currently two other complaint which are outstanding with the Ombudsman. In the first case, which relates to Complaint K below the Ombudsman has found not fault with the Councils approach. The final decision

letter is yet to be received. For the second case this is will be reported verbally if the report from the Ombudsman is received in time.

### Stage 2 complaints only

Complaint E – This relates to the same case as complaint A. However, the focus in addition to the procedural matters highlighted in complaint A related to emergency access, pedestrian safety and the party wall act. The reviewing officer concluded that in all three matters the complaint was not justified.

Complaint F – This relates to the same case as complaint C. The complaint covers a number of similar issues, but also the lack of reference to the complainant's representation in the report. However, the reviewing officer did acknowledge that the impact upon the complainant's property had been assessed. The other parts of the complaint regarding design issues was also not found to be justified.

Complaint G – This case raised issues relating to the logging of representations; a lack of responses; the description of the development. The reviewing officer found that the representation had been correctly logged and the automated response issued had provided a satisfactory explanation. There was an acknowledgement that an email hadn't been responded to. Finally, it appears that the complainant hadn't fully understood the details of the proposal, although the terminology used could have been clearer.

Complaint H – This case related to enforcement and concerned a dispute from the complainant as to whether the development in question had been legitimately commenced. It dated from 1990. In summary the only substantive matter that the case reviewer found in favour of the complainant was that the tone of the original stage 1 response had not been what the Council would normally expect.

Complaints I & K – This case related to a form of development which was subject to what is referred to as a 'prior notification procedure'. The case concerned whether this was the appropriate procedure and whether the Council had acted corrected. The case reviewer established that there was no fault in the Councils approach.

Complaint J – This case related to an application for an outbuilding. Again, the issues raised were procedural and also related to the merits (or otherwise) of the proposal. The case reviewer established that there was no fault in the Councils approach.

### Recommendations

- 1) Need to update automated response - Done
- 2) Guidance on overlooking and privacy is clear – Will be part of the Arun Design Guide currently being commissioned.
- 3) Positioning of notices – further guidance offered to officers when erecting site notices, they are in all areas that adjoin an application site (including to the rear).

- 4) Customer training needed – last undertaken in service in 2014. Scheduled to take place again in 2019/2020.
- 5) Review use of terminology in official notices – The Council can only legitimately change the words on a form provided by an applicant if it is manifestly wrong.